

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL FORSYTH,

Plaintiff,

v.

COMMISSIONER OF
SOCIAL SECURITY,
Defendant.

Case No. 07-14717

Paul D. Borman
U.S. District Judge

Michael Hluchaniuk
U.S. Magistrate Judge

**REPORT AND RECOMMENDATION
ON PLAINTIFF'S *EX PARTE* MOTION TO WITHDRAW
COMPLAINT AND DISMISS CASE WITHOUT PREJUDICE**

Plaintiff filed a complaint on November 11, 2007 against defendant, Commissioner of the Social Security Administration (SSA), seeking review of the final decision of the Appeals Council of the SSA, which affirmed the decision of the Administrative Law Judge finding that plaintiff was not disabled under the Federal Social Security Act. (Dkt. # 1). District Judge Paul D. Borman referred this matter for all pretrial proceedings to Magistrate Judge Charles E. Binder on November 2, 2007. (Dkt. # 2). This matter was reassigned to the undersigned on January 14, 2008. (Dkt. # 4). An order for plaintiff to show cause why the

complaint was not served was issued on April 8, 2008. (Dkt. # 5). In response, plaintiff filed a motion to withdraw the complaint and dismiss this matter without prejudice. (Dkt. # 6).

Although plaintiff could have simply filed a Notice of Voluntary Dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1) given that defendant has neither been served nor, obviously, served an answer or a motion for summary judgment, the undersigned concludes that the motion to dismiss without prejudice should be **GRANTED**.

Based on the foregoing, the undersigned **RECOMMENDS** that this matter be **DISMISSED WITHOUT PREJUDICE**.

The parties to this action may object to and seek review of this Report and Recommendation, but are required to file any objections within ten (10) days of service of a copy hereof, as provided for in 28 U.S.C. § 636(b)(1) and Local Rule 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1981). Filing objections that raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of Health and Human Servs.* 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of*

Teachers Local 231, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to Local Rule 72.1(d)(2), a copy of any objections is to be served on this Magistrate Judge.

Within ten (10) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall not exceed twenty (20) pages in length unless such page limitation is extended by the Court. The response shall address specifically, and in the same order raised, each issue contained within the objections by motion and order. If the Court determines any objections are without merit, it may rule without awaiting the response to the objections.

Date: May 15, 2008

s/Michael Hluchaniuk
Michael Hluchaniuk
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2008, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send electronic notification to the following: Mikel E. Lupisella and Commissioner of Social Security, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Jeffrey Atkin, 1121 N. Michigan Avenue, Saginaw, MI 48602.

s/Tammy M. Hallwood

Deputy Clerk

U.S. District Court

600 Church Street

Flint, MI 48502

(810) 341-7850

tammy_hallwood@mied.uscourts.gov